IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

OP.No. 4257 of 2001(F)

PETITIONER:

GEORGE V.ABRAHAM,
VADAKKUMKARA PUTHENPURAKEL,
NALLANIKUNNU,
ELAVINTHITTA P.O.,
PATHANAMTHITTA – 689 625.

BY ADV. SRI.ALEX VARGHESE

RESPONDENTS:
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1. **TRAVANCORE PLYWOOD INDUSTRIES LTD.,**
   PUNALUR 691 305,
   REPRESENTED BY ITS MANAGING DIRECTOR.

2. **THE CHAIRMAN,**
   T.P.I.LTD.,
   KERALA STATE INDUSTRIAL ENTERPRISES LTD.,
   THIRUVANANTHAPURAM – 695 014.

BY SRI.E.K.NANDAKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.7057/2001 IN O.P.NO.4257/2001 F

CLOSED

8/06/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PETITIONER'S LETTER DTD. 27/10/1998 TO 1ST RESPONDENT SEEKING PERMISSION TO JOIN DUTY.**

EXT.P2: **COPY OF CHARGE MEMO NO.798/98-99 DTD. 3/11/1998 ISSUED BY 1ST RESPONDENT TO PETITIONER.**

EXT.P3: **COPY OF EXPLANATION DTD. 10/11/1998 SUBMITTED BY PETITIONER TO 1ST RESPONDENT.**

EXT.P4: **COPY OF EXPLANATION DTD. 31/12/1998 SUBMITTED BY PETITIONER TO 1ST RESPONDENT.**

EXT.P5: **COPY OF ORDER NO.1863/99-2000 DTD. 16/03/2000 ISSUED BY 1ST RESPONDENT TO PETITIONER.**

EXT.P6: **EXTRACT OF STANDING ORDERS OF 1ST RESPONDENT.**

EXT.P7: **COPY OF APPEAL DTD. 22/09/2000 SUBMITTED BY PETITIONER TO 2ND RESPONDENT.**

EXT.P8: **COPY OF PROCEEDINGS NO.TP1/12/2000 DTD. 18/12/2000 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 4257 of 2001 (F)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 8th day of June, 2007

J U D G M E N T

Petitioner was employed in the service of the first respondent, a government company. Ext.P2, memo of charges, was issued to him on the grounds that he applied for a job in a foreign country without the permission of the management, that he absented himself without leave, without sufficient ground or satisfactory explanation, and that such conduct was unbecoming of his status as an employee of the first respondent.

2. It is the admitted case of the petitioner that, while in service, he availed casual leave for a few days, left an application for leave for two years for foreign service and, thereafter proceeded to be employed in a foreign country. While it is his case that his interview with the foreign employer, his visa procedures, etc, were with the tacit concurrence of the then Managing Director, who had admitted, as witness in the disciplinary proceedings, that a leave application was received

from the petitioner, he does not have a case that leave was granted to him. According to him, he returned after his foreign employment and, thereafter, was not permitted to rejoin duty, but was kept out of service and was proceeded against on counts of indiscipline, as stated above.

3. The disciplinary proceedings against the petitioner culminated in the imposition of punishment of barring of three increments with cumulative effect. As a result of the appeal of the petitioner, that punishment was reduced to barring of one increment.

4. In support of this original petition, it is contended that in terms of Clause 15 of the Standing Orders, an employee could be proceeded against by holding a formal enquiry, after placing him under suspension, only in cases where the punishment is reduction in rank, removal or dismissal and since no such punishment is imposed, the proceedings are unauthorised.

5. To resolve the issue, the relevant provisions of Ext.P6 Standing Orders, to be considered are as follows:-

> 12. Any of the following acts or omissions on the part of an employee shall amount to misconduct.
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> xxx xxx xxx
>
> (i) Applying for job outside without the permission of the Management.
>
> (l) Absence without leave or overstaying sanctioned leave without sufficient ground or satisfactory explanation.
>
> (u) Pursuance of a conduct unbecoming of an employee of his status.
>
> xxx xxx xxx
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> 15. The following shall be the procedure for punishment:-
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> A charge sheet will be given to the employee concerned and he will be asked to give his

explanation. On receipt of the explanation, in case the alleged misconduct prima facie appears to be of a serious nature, the Management may place the employee under suspension pending enquiry. In other cases the Management will decide whether a formal enquiry should be conducted, and if the decision is for an enquiry, an enquiry shall be ordered to be conducted. The Management will, on receipt of the finding of the enquiry authority or in case where no enquiry is ordered may, on receipt of the explanation, issue notice to the employee to show cause why a specific punishment should not be meted out to him. On receipt of his reply or in the absence of one, or the expiry of the date by which the reply is called for, Management will pass suitable orders.

This procedure will be applicable only in case where punishment are reduction in rank, removal or dismissal. In other cases, the Management shall pass such orders as may be appropriate on receipt of the employee's explanation.

xxx xxx xxx

6. The allegations against the petitioner, on the basis of which Ext.P2 memo of charges was issued, are referable to three counts of indiscipline, enumerated as misconducts, in Clause 12 of Ext.P6 Standing Orders. Nothing is pointed out from among the Standing Orders that those misconducts cannot invite the punishment of reduction in rank, removal or dismissal from service. While the seriousness or otherwise of the nature of the misconduct can be weighed by an able and competent administrative superior, it is not to the dictate of law, that the employer has to come to a prior conclusion as to what punishment shall be imposed. If such a procedure is adopted, the employer would be pre-judging the disciplinary proceedings and, in a way, such an approach itself may turn out to be arbitrary. In that view of the matter, the requirement in Clause 15 of Ext.P6 that the procedure prescribed thereby is applicable only in cases of punishment by reduction in rank, removal or dismissal from service, has to be understood as meaning only that one among those three punishments could be imposed only after following the procedure prescribed in Clause 15. It does

not emanate out of Clause 15, as a necessary corollary, that recourse to the procedure in Clause 15 can be made only in cases where the management or the disciplinary authority had come to the previous tentative conclusion that any among the three punishments of reduction in rank, removal or dismissal from service has to be imposed. There is no illegality, irregularity, impropriety or unconstitutionality of any manner, in an employer following the procedure prescribed for the imposition of a major penalty and ultimately imposing only a minor penalty.

7. In the case in hand, reduction/barring of one increment is the punishment ultimately sustained by the appellate authority, reducing the punishment of barring of three increments with cumulative effect, imposed by the disciplinary authority. This does not mean that such a punishment could be imposed only by taking action without following the procedure prescribed in Clause 15 of Ext.P6 Standing Orders. Therefore, the management cannot also be found fault with for having kept the

petitioner away from service, till completion of the proceedings. The challenge fails.

8. But having decided to impose a punishment other than removal or dismissal from service, the management had also to take a decision as to how the period, from his reporting for duty, till the imposition of punishment, ultimately, is to be treated because that period can very well be treated as, going by its contents, not much different from periods spent under suspension.

9. However, I have also noticed that the employer, a government company, as of now, does not appear to be worth even its scales and is managed by a skeletal support system. Therefore, no useful purpose would be served by directing it to refix the emoluments etc. This is all the more so because, even according to the petitioner, he went for employment abroad because he and many other employees, even at that time, were being prompted by the management to either go out of service

under Voluntary Retirement Scheme or to obtain employment elsewhere. As of now, the petitioner has superannuated.

10. While I do not find any ground to interfere with the disciplinary proceedings, I am not inclined to issue any directions for re-computation or re-formulation of any monetary benefit due to the petitioner on account of his being kept out of service during the enquiry, more particularly because, weighing the rights of the petitioner on one hand and the situation of a government company on the other, and having regard to the totality of the facts and circumstances, I am of the firm view that justice does not require in such order being made in favour of the petitioner. However, the learned counsel for the petitioner points out that leave of various other similarly situated persons have been regularised and financial benefits released. If the petitioner points out specific cases to the Managing Director and makes appropriate request in that regard, that shall be considered and decision taken within three months from the date

of production of a copy of this judgment along with such request. Ordered accordingly. No costs.

Original petition is disposed of as above.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 4257 of 2001 (F)

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J U D G M E N T

8th June, 2007